

ORDINANCE NO 14

SERIES 2020

**An Ordinance of the Crested Butte Town Council Approving the Lease of the Chamber of Commerce Visitors Center - A Town Owned Building - Located at 601 Elk Avenue to the Crested Butte / Mt Crested Butte Chamber of Commerce**

**WHEREAS**, the Town of Crested Butte, Colorado is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado; and

**WHEREAS**, the Crested Butte / Mt. Crested Butte Chamber of Commerce, Inc., a Colorado nonprofit corporation (hereafter "Chamber"), has been duly organized for the purpose of providing tourist information and other related services for the towns of Crested Butte and Mt. Crested Butte; and

**WHEREAS**, the parties wish to enter into a 10 year lease which would allow the Chamber to lease the Visitor Center from the Town for the term and upon the conditions set forth in the lease agreement; and

**WHEREAS**, Colorado Revised Statutes, section 31-15-713(1)(c) requires that such a lease for a period of more than one year be authorized by ordinance; and

**WHEREAS**, the Town anticipated entering into the below-referenced Visitor's Center Lease Agreement as set forth in the recitals of Ordinance No., Series 2020; and

**WHEREAS**, the Town Council hereby finds that it would be in the best interests of the Town's inhabitants and visitors to lease the Visitor's Center to the Chamber for the term and with the conditions set forth in the Visitor's Center Lease Agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,**

**Section 1. Adoption of Visitor's Center Lease Agreement.** The Town Council hereby approves, ratifies and adopts the Visitor's Center Lease Agreement between the Town of Crested Butte, and the Crested Butte / Mt. Crested Butte Chamber of Commerce, Inc., a Colorado nonprofit corporation in good standing, which Agreement is attached hereto and incorporated herein by this reference. The Mayor and Town Clerk are hereby authorized and directed to execute said Agreement on behalf of the Town.

**Section 2. Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

**Section 3. Savings Clause.** Except as hereby amended, the 1987 Crested Butte Municipal Code shall remain valid, and in full force and effect. Any provision of any ordinance previously adopted by the Town of Crested Butte which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

**INTRODUCED, AND FIRST READ BEFORE THE TOWN COUNCIL THIS \_\_\_\_ DAY OF APRIL, 2020.**

**ADOPTED BY THE TOWN COUNCIL UPON SECOND READING AND PUBLIC HEARING THIS \_\_\_\_ day of May, 2020**

Town of Crested Butte, COLORADO

By:   
James A Schmidt, Mayor

ATTEST:

\_\_\_\_\_  
Lynelle Stanford, Town Clerk

(SEAL)

## VISITOR'S CENTER LEASE AGREEMENT

THIS AGREEMENT is made induplicate and entered into this 18<sup>th</sup> day of May 2020, at Crested Butte, Colorado, as

1. PARTIES. The parties to this Agreement are:

TOWN OF CRESTED BUTTE, a Colorado home rule municipal corporation, whose address is P.O. Box 39, Crested Butte, CO 81224 (hereafter "Town"),

and

THE CRESTED BUTTE / MT. CRESTED BUTTE CHAMBER OF COMMERCE, INC, a Colorado nonprofit corporation, whose address is P.O. Box 1288, Crested Butte, CO 81224 (hereafter "Chamber").

2. RECITALS.

2.1 The Town will be the owner of a building to be located on the real property located within the Town of Crested Butte, Colorado, being east of Sixth Street and west of Block 53, and north of Elk Avenue and south of Maroon Avenue (hereafter "Building").

2.2 The Town desires to lease the Building and the real property immediately surrounding the Building which is described on the Exhibit to be attached hereto and incorporated herein by referenced (hereafter "Property") to the Chamber for a period of ten years for use as a visitor's center.

2.3 The Chamber wishes to lease the Building and Property from the Town upon the terms and conditions set forth in this Agreement.

3. AGREEMENT. For and in consideration of the above Recitals and the mutual promises set forth herein, the sufficiency of which is hereby acknowledged, the parties agree to the following terms and conditions of this Agreement.

4. TERM. The Lease term shall commence on May 18 2020 and shall continue for a period of ten years thereafter.

5. LEASE OF BUILDING AND PROPERTY. The Town hereby leases to the Chamber, and Chamber hereby takes and rents from the Town the Building and Property located in the County of Gunnison and State of Colorado, together with the fixtures in the Building on the date of commencement of the Lease term.

6. RENT. In lieu of rent, the Chamber agrees to be responsible for maintaining the public restrooms in the Building, and keep them open to the public during hours when the Chamber is open, or as otherwise reasonably required by the Town.

7. SECURITY DEPOSIT. The Chamber shall not be required to pay a security deposit to the Town.

8. USE OF BUILDING. The Building and Property shall be used by the Chamber as a Visitor's Center and for other customary Chamber of Commerce business, and for no other purpose without the prior written consent of the Town, which consent shall not be unreasonably withheld. The Chamber shall not use the Building in any fashion as would increase the risk of fire, explosion or any physical destruction or damage to the Building. Further, the Chamber shall not use the Building to further any discrimination based upon race, sex, sexual preference, creed, religion or national origin. The Chamber shall comply with all federal, state and municipal laws, ordinances and regulations applicable to the Building and Property and the business conducted therein by the Chamber.

9. UTILITIES. The Chamber shall timely pay, as the same become due and owing, all costs, charges, statements or assessments for all utility services of every nature and description, including those incurred for the public restrooms referenced below, and including, without limitation, gas, electricity, telephone, internet and water and sewer service assessments for 1.0 EQRs.

10. MAINTENANCE AND REPAIRS. The Chamber shall be responsible for and pay for all necessary basic maintenance and repairs to the interior and exterior of the Building, except repairs necessitated by the negligent or intentional acts of the Town or its employees. Town shall be responsible for roof repairs and replacement.

11. TOWN'S RESPONSIBILITIES. The Town shall at all times during the term of this Agreement and any extension hereof be responsible for:

11.1 Keeping the sidewalks within the Property as free of snow and ice accumulations as reasonable by using its sidewalk machine only, and keeping the motor vehicle driving and parking areas reasonably free of snow and ice accumulations.

11.2 Maintaining the landscaping within the Property in a healthy and well-kept condition.

12. CHAMBER'S RESPONSIBILITIES. The Chamber shall at all times during the term of this Agreement and any extension hereof be responsible for:

12.1 Any hand shoveling and chipping necessary to maintain the sidewalks within the Property reasonably free and clear of snow and ice accumulations. Town's responsibility for sidewalk clearing is noted in 11.1.

12.2 Maintaining the exterior and interior of the Building, and the Property in a clean, attractive, and well-kept condition by providing all necessary maintenance and janitorial services to the Building and by removing all refuse from the Building and Property. The Chamber shall not place any trash or other refuse, or other items of any nature outside the Building, except as is necessary for removal from the Property. The Chamber is responsible for painting the inside of the building with the vendor of their choice, as deemed necessary, while Town is responsible for painting the outside of the building.

12.3 Maintaining, and if required by law modifying, the Building and Property so that it conforms with any state or federal requirement for use of the Building for its intended purpose during the term of this Agreement and any extension hereof.

13. PUBLIC RESTROOMS. The Chamber shall maintain, clean and supply the public restrooms on the Property at its sole cost; and keep them open to the public during hours when the Chamber is open, or as otherwise reasonably required by the Town. Said restrooms shall be cleaned on a regular basis.

14. INSURANCE AND INDEMNIFICATION.

14.1 During the term of this Agreement and any extension hereof, the Town shall maintain in effect fire and extended coverage insurance on the Building.

14.2 At its sole expense, Tenant shall obtain and keep in force during the Term commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000.00) for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property, insuring against any and all liability of Landlord and Tenant, including coverage for contractual liability, broad form property damage, and non-owned automobile liability, with respect to the Premises or arising out of the maintenance, use or occupancy of the Premises. The insurance shall be noncontributing with any insurance that may be carried by Landlord and shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury, or damage to Landlord, its agents, and employees, or the property of such persons. To clarify, sidewalks adjacent to building are not part of the property.

14.3 The Chamber shall carry fire and extended coverage insurance on all items of personal property, fixtures and improvements located within the Building and owned by it, and shall be solely responsible for any damage or destruction of such personal property, fixtures, or improvements.

14.4 The Chamber agrees to hold harmless and to indemnify the Town

attorneys fees, arising or alleged to arise from any act or omission of the Chamber, or its employees, contractors, customers or invitees, or arising from any injury or damage to any person or the property of any person in the Building or on the Property during the term of this Agreement and any extension hereof, except those arising from the acts or omissions of the Town, or its employees, contractors, customers or invitees.

14.5 The Town agrees to hold harmless and indemnify the Chamber from all claims and liabilities, expenses and costs, including reasonable attorneys' fees, arising from its negligent actions in the Building and on the Property during the term of this Agreement and any extension hereof, provided that the Town is not immune from such liability directly under any governmental immunity law or laws.

15. ACCESS TO THE BUILDING. The Town shall have access to the Building and Property at any reasonable time for purposes of inspecting the condition thereof, to make repairs as set forth herein, and for emergencies.

16. AMERICANS WITH DISABILITIES ACT. It shall be the sole duty and responsibility of the Chamber, at its sole cost, to take such actions and make such modifications as may be necessary to bring the Building and Property in full compliance and conformity with the mandatory requirements of the Americans With Disabilities Act within a reasonable time of learning of such responsibility during the term of this Agreement and any extension hereof.

17. ADDITIONS AND ALTERATIONS TO THE BUILDING.

17.1 The Chamber shall not make any changes, additions, alterations or improvements to the Building or Property without the prior written consent of the Town.

17.2 All expenses, fees and costs pertaining to any such changes, additions, alterations or improvements shall be timely paid by the Chamber, including all permits, licenses, and water and sewer system development fees required in connection therewith. The Chamber shall not permit any mechanic's lien or materialman's lien, or any other liens to be filed against the Building or the Property for any labor or material furnished to them.

17.3 Any alteration or addition to the Building, including wall-to-wall carpeting, panelling or other wall covering, and any other article attached or affixed to the floor, wall or ceiling of the Building shall become the property of the Town and shall remain upon and be surrendered with the Building as a part of it at the termination of this Agreement or any extension hereof. The Chamber hereby waives all rights to any payment or, compensation therefor. Provided, however, that the Town may request the Chamber, prior to the termination of this Agreement or any extension hereof, to remove any and all such additions, alterations or fixtures placed or installed by it in the Building and the Chamber shall repair any damage caused by such removal.

18. REMOVAL OF FIXTURES. Prior to the commencement of the Lease term, the parties shall jointly prepare a list of the fixtures contained within the Building which shall be and remain a part of the Building. The Chamber may remove any of its fixtures which are not a part of the Building at the termination of this Agreement or any extension hereof provided that it properly repairs all damage caused by such removal.

19. HOURS OF OPERATION. The Chamber shall provide adequate personnel to operate the Visitor Center seven (7) days per week 365 days a year, with the exceptions of Tuesdays-Thursdays in the off-seasons at the discretion of the Chamber (see Visitor Center Policy). Operating hours will be 9-5 pm with reasonable flexibility to manage the hours of operation to best accommodate the tourists. Council will be notified of any changes in the scheduled hours.

20. SIGNS. The Chamber shall be permitted to place a sign or signs upon the Building or Property provided that they are first approved by the Town, which approval shall not be unreasonably withheld, and appropriately permitted as otherwise required by the Town's ordinances. Any such signs shall be properly maintained in an attractive condition.

21. DEFAULT BY CHAMBER. Any of the following events shall constitute a default of this Agreement by the Chamber:

21.1 The failure of the Chamber to perform or observe any covenant, agreement or obligation contained herein if such failure continues for 30 days following written notice to it by the Town, provided that if the nature of the Chamber's failure is such that more than 30 days is reasonably required to cure the default, then the Chamber shall not be deemed to be in default if it commences such cure within the 30 day period and thereafter diligently pursues such cure to completion.

21.2 An assignment of this Agreement or the leasehold created hereby for the benefit of creditors of, or by the Chamber.

21.3 The filing of any case, petition or answer by or against the Chamber under the provisions of the Federal Bankruptcy Act or successor legislation.

21.4 Any petition or other proceedings by or against the Chamber for the appointment of a trustee, receiver or liquidator of the Chamber or of any of the Chamber's property.

21.5 Any attachment or execution levied upon the Chamber's property or its interest under this Agreement.

22. TOWN'S REMEDY UPON THE CHAMBER'S DEFAULT. If any of the above defaults occurs, the Town shall have the right to terminate this Agreement.

23. DEFAULT BY THE TOWN. If the Town shall default in the performance of any covenant, agreement or obligation to be performed by it pursuant to this Agreement, and such default continues for 30 days after written notice thereof by the Chamber to the Town, then the Chamber shall have the right to cure such default with the reasonable costs and expenses thereof to be paid by the Town within 15 days after receiving a statement therefor. Provided, however, that if such default cannot reasonably be cured within such 30 day period, then the Town shall not be deemed to be in default if it shall commence such cure within the 30 day period and thereafter diligently pursue such cure to completion. Should no cure for a Town default of performance be agreed up, Chamber has the right to terminate this Agreement after the 30 day written notice period.

24. SURRENDER OF THE BUILDING AND PROPERTY. The Chamber agrees that on the last date of this Agreement or any extension hereof, or upon termination of this Agreement, it will quietly and peacefully leave and surrender the Building and Property to the Town in as good condition as at the commencement of this Agreement, ordinary wear and tear excepted.

25. AUTOMATIC TERMINATION. It is agreed that if a building permit for construction of the Building is not issued and construction of the Building is not commenced on or before July 1, 1996, this Agreement shall terminate and be of no force or effect.

26. TAXES PAYABLE BY CHAMBER. The Chamber shall promptly pay all taxes and assessments levied upon the personal property and fixtures of the Chamber located within the Building and on the Property.

27. DESTRUCTION OF BUILDING. In the event that the Building or any part thereof is damaged as a result of fire, destruction, or other casualty or peril, the Town or Chamber shall have the right to continue this Agreement and to repair and replace the



Building in as good a condition as it was prior to such damage. Such election shall be made by giving written notice to the other party within 90 days from the date of such damage. If the parties agree to terminate the Agreement, the Chamber shall immediately surrender the Building to the Town. If an election is made to repair the Building, the same shall be done as expeditiously as reasonably possible.

28. ASSIGNMENT AND SUBLETTING. The Chamber shall not assign this Agreement, in whole or in part, nor sublet all or part of the Building or Property without the prior written consent of the Town, which consent shall be granted or withheld at the Town's sole discretion.

29. EXECUTION AND RATIFICATION. This Agreement shall be ratified by resolution of the Board of Directors of the Chamber and subscribed and sealed by the President and Secretary of the Chamber. It shall be adopted by Ordinance of the Town.

30. ARBITRATION. The parties agree that prior to filing an action to enforce, interpret or construe the provisions of this Agreement, the parties shall enter into good faith arbitration with an arbitrator agreed to between the parties, or appointed by the Gunnison County District Court Judge, as a condition precedent to filing any such litigation.

31. ATTORNEYS' FEES. If any action is brought in a court of law by either party to this Agreement as to the arbitration, enforcement, interpretation or construction of this Agreement or any document provided for herein, the substantially prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

32. WAIVER. No assent, express or implied, by either party to any breach hereof by the other shall be deemed to be a waiver of any subsequent or other breach.

33. APPLICABLE LAW AND VENUE. This Agreement is entered into in Gunnison County, Colorado and it is agreed that it shall be construed pursuant to Colorado law, and that the proper jurisdiction and venue of any action pertaining hereto shall be in the District Court of Gunnison County, Colorado.

34. NOTICES. All notices required hereunder shall be in writing and shall be delivered in hand, or sent by certified mail to the parties at their respective addresses set forth above. Either party may change its address by giving written notice of the change to the other party.

35. BINDING AGREEMENT. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

36. CAPTIONS. The captions are inserted only as a matter of convenience for

reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision thereof.

37. SEVERABILITY. If any provision, covenant, clause or agreement contained in this Agreement or the application thereof shall be found to be invalid, such invalidity shall not affect the validity of the remaining provisions, covenants, clauses, agreements or the validity of this Agreement as a whole.

38. OPTION TO RENEW LEASE AGREEMENT. The Chamber shall have the option to renew this Agreement for an additional term of 10 years subject to the following conditions:

38.1 The Chamber shall give the Town written notice of its intention to renew this Agreement not less than 120 days prior to the end of the initial term hereof.

38.2 On or after the date written notice of intent to renew the Agreement is provided to the Town, the Chamber is not in default of the Agreement.

38.3 If reasonably necessary in the public interest, the parties shall reasonably renegotiate any of the conditions and covenants hereof for the extended term.

**IN WITNESS WHEREOF**, the parties have executed this Agreement in duplicate to be effective as of the date first written above.

**TOWN:**

TOWN OF CRESTED BUTTE, a Colorado  
home rule municipality

**CHAMBER:**

THE CRESTED BUTTE/MT. CRESTED  
BUTTE CHAMBER OF COMMERCE, INC.,  
a Colorado nonprofit corporation

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TOWN:

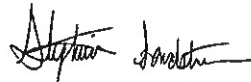
TOWN OF CRESTED BUTTE, a Colorado  
home rule municipality



Dara MacDonald  
Town Manager

CHAMBER:

THE CRESTED BUTTE/MT. CRESTED  
BUTTE CHAMBER OF COMMERCE, INC.,  
a Colorado nonprofit corporation



Stephanie Sandstrom  
Executive Director